Supreme Court, U. S.
FILED
MAR 29 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-5387

RODOLFO SIFUENTES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONER

BALLARD BENNETT
214 Henson Building
Weslaco, Texas 78596
(512) 968-8111

Attorney for Petitioner

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

Page

ARGUMENT 1

I. As to the Magnitude of the Intrusions 2

II. As to the Discretion of the Border Patrol Agents at the Sarita Checkpoint 3

III. As to an Effective "Line Watch" 5

IV. As to Limiting the Use of Checkpoints by Police Organizations 6

CONCLUSION 7

TABLE OF AUTHORITIES

Cases:

Almeida-Sanchez v. United States, 413 U.S. 266 2

United States v. Brignoni-Ponce, 422 U.S. 873 1

Miscellaneous:

Hillinger, *Legal or Not, Everyone is Welcome in Laredo*, Los Angeles Times, February 22, 1976, Part 1, at pages 1, 20 and 21 5

United States v. Martinez-Fuerte, Supreme Court No. 74-1560, Brief for the United States 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-5387

RODOLFO SIFUENTES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONER

ARGUMENT

In its brief herein the Government attempts to distinguish its checkpoint operations from the roving patrol stops without cause or reasonable suspicion which were held to be unconstitutional in *United States v. Brignoni-Ponce*, 422 U.S. 873, on the grounds (1) that the law enforcement need for the checkpoints is much greater than is such need for roving patrols and (2) that the magnitude of the intrusions practiced at the checkpoints is less than the intrusions of the roving

patrols (Resp. Br. 7). In regard to its first contention, the Government offers no explanation as to why in the case of *Almeida-Sanchez v. United States*, 413 U.S. 266, it made a convincing showing that "roving checks of automobiles *are the only feasible means* of apprehending them [illegal aliens]" (*id.* at 276, concurring opinion of Mr. Justice Powell, emphasis added) but it now maintains, without benefit of proof, that the law enforcement need for checkpoints is much greater than the need for roving patrols. It appears that between *Almeida-Sanchez* and the present case the Government's evaluation of the relative importance of its various types of enforcement activities in the immigration field has somehow undergone a striking reversal.

I.

AS TO THE MAGNITUDE OF THE INTRUSIONS

In support of its contention that the checkpoints are substantially less intrusive than roving patrols, the Government has favorably compared its checkpoint operations to "the interruption caused by a traffic light or stop sign" (Resp. Br. 8). While it is true that both procedures involve stopping at signals, that is where the similarity in this tortured analogy ends. If the State of Texas were to position permanently a Texas Ranger at a selected traffic stop sign, where the Ranger forced each passing motorist to roll down his car window so the Ranger could ask him a "few" questions and visually search the interior of the vehicle (while hitching

up his gun belt), then such a traffic stop would resemble a checkpoint, but only with the added condition that any time the officer did not feel that the motorist conformed with the officer's concept of "the pattern", then the officer could direct the motorist to the side of the road for further interrogation, which might include, "You wouldn't mind opening your trunk would you, buddy?" Once the analogy is correctly drawn, the unconstitutionality of the intrusions becomes apparent.[1]

II.

AS TO THE DISCRETION OF THE BORDER PATROL AGENTS AT THE SARITA CHECKPOINT

The Government contends that the practices at the Sarita checkpoint are not discriminatory because Border

[1] The photograph of the Sarita checkpoint which is attached as an appendix to the Respondent's brief (Resp. Br. 1a) illustrates the danger to which both motorists and Border Patrol agents are exposed when the north-bound lane of the only highway in this remote area is blocked by a stopped vehicle. (This hazard is discussed at pages 32-34 of Petitioner's brief.) The photograph's background gives some clue to the unrelenting character of the ranch country in southern Texas. If a fast-moving motorist, approaching a vehicle stopped at this checkpoint from the rear, failed to stop because of brake failure or intoxication, the oncoming motorist would (1) strike the stopped vehicle, or (2) go to the right and strike the agent standing by the stopped vehicle or perhaps hit the border patrol vehicles parked next to the paved shoulder, or (3) go to the left and encounter any traffic which might be traveling south at the time.

Patrol officers stop all vehicles passing this checkpoint except those containing "local inhabitants" (Resp. Br. 9). It should first be noted that the innocuous-sounding exception to this general rule contains a certain amount of discretion, for who determines the criterion for a "local inhabitant" and how does the Border Patrol agent on duty decide whether an approaching motorist meets this criterion? In this regard Border Patrol agent De Leon testified as follows: "If I know the person, like I said, local residents or people that go through that checkpoint more than once, every other day, I just motion them to go ahead from where I stand" (A. 26). It is extremely doubtful that all agents who work this checkpoint select the same "local inhabitants" to wave through without stopping.

Aside from such free passes through the Sarita checkpoint, the Government appears to reason that the fact that all the other vehicles are stopped proves that their occupants are accorded the same treatment. This reasoning ignores the obvious: the stop is merely the overture for the checkpoint procedures which can range from a single question to a prolonged period of interrogation with a possible visit to "secondary". Whether there is only one question or a full-blown inquiry into the ancestry, history and present activities of the traveler is entirely in the discretion of the Border Patrol agent on duty. To contend that a darker citizen of Mexican extraction is not likelier to receive the more extended and more intrusive reception than is one of light coloring violates the bounds of credibility and is plainly not correct.

III.

AS TO AN EFFECTIVE "LINE WATCH"

The Government in its brief in the present case (at page 10) refers to its brief in the *Martinez-Fuerte* case (at pages 26-27) where it argues that strengthening the "line watch" could not obviate the alleged necessity for checkpoints situated many miles from the physical boundary. In regard to the Government's present approach to the "line watch" operations, a newspaper article reports that for three days each year anyone may cross from Mexico into Laredo, Texas, with no questions asked.[2] This surprising occurrence takes place in connection with the annual George Washington's Birthday Celebration at Laredo, and it is called the "Free Pass into America" or "*Paso Libre America.*" During a three-day period the international bridge at Laredo is open for all to enter, but foreign visitors are forbidden to leave the city limits of Laredo unless they possess proper papers allowing them to continue into the interior of the United States. Roadblocks are set up on all five roads leading out of Loredo and are operated for a month after the celebration. It was reportedly estimated that 20,000 persons (10 percent of those crossing) would slip out of Laredo and start north.

One wonders what the impact of this "Free Pass into America" has had on the efficiency of the "line watch" operations and how many illegal aliens are now at large in the United States as a result of this abandonment of the usual "line watch" procedures. Can a dam which

---

[2] Hillinger, *Legal or Not, Everyone is Welcome in Laredo*, Los Angeles Times, February 22, 1976, Part 1, at pages 1, 20 and 21.

automatically opens three days out of the year really be said to be much of a dam?

IV.

AS TO LIMITING THE USE OF CHECK-POINTS BY POLICE ORGANIZATIONS

In its brief (Resp. Br. 11) the Government contends that the use of permanent checkpoints as a policing device, though constitutional when used within 100 air miles of the border to enforce immigration laws, could and should be considered unconstitutional if employed by police in other situations. In advancing this contention it would seem that the Government, at least implicitly, admits that the intrusions into privacy perpetrated at the checkpoints are not the mere bagatelles they are elsewhere pictured to be.[3] Furthermore, there are surely many vital areas in the law enforcement spectrum that are constitutionally entitled to the same policing tools as are permitted the inland enforcement of the immigration laws.

If the permanent checkpoints were held to be lawful, but only if employed within 100 air miles of an international border, they would still hold great and inherent potential for political abuse and mischief (Pet. Br. 45-46). There would be millions of citizens residing in the border areas of the United States who could be oppressed by the systematic misuse of these devices for the devious purposes of a domineering political party seeking to perpetuate its power.

---

[3]See Part I of this reply brief and the Government's brief in *United States v. Martinez-Fuerte*, Supreme Court No. 74-1560, at pages 28-33.

CONCLUSION

For the reasons set forth in Petitioner's brief and in this reply brief, the judgment of the Court of Appeals affirming the conviction of Petitioner should be reversed.

Respectfully submitted,

BALLARD BENNETT
214 Henson Building
Weslaco, Texas 78596
(512) 968-8111

Attorney for Petitioner